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2 UNITED STATES DISTRICT COURT  
3 DISTRICT OF NEVADA  
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5 UNITED STATES OF AMERICA, ) 3:12-cr-00015-HDM-WGC  
6 Plaintiff, )  
7 vs. ) ORDER  
8 RANDY MACARIO ANCHETA, )  
9 Defendant. )  
10

11 Defendant filed a 28 U.S.C. § 2255 motion to vacate, set  
12 aside, or correct his sentence contending that his sentence should  
13 be vacated because the Hobbs Act robbery offense which served as a  
14 predicate for his 18 U.S.C. § 924(c) conviction no longer qualifies  
15 as a "crime of violence" in light of *Johnson v. United States*, 135  
16 S.Ct. 2551 (2015) (ECF Nos. 123, 128). This court denied  
17 defendant's motion on June 29, 2018 (ECF No. 142) based on the  
18 Ninth Circuit Court of Appeals' decision in *United States v.*  
19 *Howard*, 650 Fed.Appx. 466, 468 (9th Cir. 2016) wherein the court  
20 held that Hobbs Act robbery qualifies as a crime of violence under  
21 § 924(c). Defendant requests that this court issue a certificate  
22 of appealability.

23 The standard for issuance of a certificate of appealability  
24 calls for a "substantial showing of the denial of a constitutional  
25 right." 28 U.S.C. § 2253(c). The Supreme Court has interpreted 28  
26 U.S.C. § 2253(c) as follows: "Where a district court has rejected  
27 the constitutional claims on the merits, the showing required to  
28 satisfy § 2253(c) is straightforward: The petitioner must

1 demonstrate that reasonable jurists would find the district court's  
2 assessment of the constitutional claims debatable or wrong." *Slack*  
3 *v. McDaniel*, 529 U.S. 473, 484 (2000); see also *James v. Giles*, 221  
4 F.3d 1074, 1077-79 (9th Cir. 2000). The Supreme Court further  
5 illuminated the standard for issuance of a certificate of  
6 appealability in *Miller-El v. Cockrell*, 537 U.S. 322 (2003). The  
7 Court stated in that case:

8 We do not require petitioner to prove, before the  
9 issuance of a COA, that some jurists would grant the  
10 petition for habeas corpus. Indeed, a claim can be  
11 debatable even though every jurist of reason might  
12 agree, after the COA has been granted and the case  
13 has received full consideration, that petitioner  
14 will not prevail. As we stated in *Slack*, "[w]here a  
15 district court has rejected the constitutional  
16 claims on the merits, the showing required to  
17 satisfy § 2253(c) is straightforward: The petitioner  
18 must demonstrate that reasonable jurists would find  
19 the district court's assessment of the  
20 constitutional claims debatable or wrong."

21 *Miller-El*, 123 S.Ct. at 1040 (quoting *Slack*, 529 U.S. at 484).

22 The court has considered the issues raised by defendant, with  
23 respect to whether they satisfy the standard for issuance of a  
24 certificate of appeal, and the court determines that none meet that  
25 standard. The court therefore denies a certificate of  
26 appealability in this case.

27 DATED: This 29th day of June, 2018.

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UNITED STATES DISTRICT JUDGE